

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID WESLEY HAWKINS,

Petitioner,

No. C 03-3668 PJH

v.

**ORDER RE: PETITIONER'S SECOND
REQUEST FOR AN EVIDENTIARY
HEARING AND REQUEST FOR
DISCOVERY¹**

JOHN CAVALLI, Chief, Santa Clara
County Probation Department

Respondent.

On March 11, 2005, this court granted Hawkins' request to expand the record with respect to Claims Five and Six. The court, however, denied without prejudice Hawkins' request for an evidentiary hearing regarding those claims until the parties were able to re-brief those claims based on the newly expanded record. The parties have now re-briefed the claims. Additionally, Hawkins has renewed his request for an evidentiary hearing with respect to claim five **only**, and now also requests leave to conduct additional discovery regarding claim five pursuant to Habeas Rule 6(a). For the reasons set forth below, Hawkins' motion for discovery is GRANTED, and his motion for an evidentiary hearing is DENIED without prejudice until completion of the discovery such that Hawkins may re-evaluate the necessity of the request.

Hawkins claims that the prosecution's failure to disclose potentially exculpatory

¹ Pursuant to Civil Local Rule 7-13, this order may not be cited except as provided by Civil Local Rule 3-4(e).

1 information violated his due process rights. Specifically, Hawkins contends that the
2 prosecution failed to disclose information regarding a close and continuing financial
3 relationship between witnesses. Accordingly, Hawkins requests leave pursuant to Habeas
4 Rule 6(a) to depose those witnesses.

5 Habeas Rule 6(a) provides that a "party shall be entitled to invoke the processes of
6 discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the
7 judge in the exercise of his discretion and for good cause shown grants leave to do so, but not
8 otherwise." Good cause for discovery under Rule 6(a) is shown "where specific allegations
9 before the court show reason to believe that the petitioner may, if the facts are fully developed,
10 be able to demonstrate that he is . . . entitled to relief . . ." *Pham v. Terhune*, 400 F.3d 740,
11 743 (9th Cir. 2005) (*quoting Harris v. Nelson*, 394 U.S. 286, 299 (1969)). The Ninth Circuit
12 has also described this standard as being that discovery must be allowed when it is
13 "essential" for the petitioner to "develop fully" his or her underlying claim. *Id.* (*quoting Jones v.*
14 *Wood*, 114 F.3d 1002, 1009 (9th Cir. 1997)). Where the evidence sought via a petitioner's
15 discovery request "may well contain favorable, material information," the Ninth Circuit has held
16 that it is "essential," and that the district court is required to grant the petitioner's request
17 pursuant to Rule 6(a). *Id.*

18 Here, Hawkins has demonstrated that the depositions of witnesses John Mayes,
19 Andrew Foss, and Johnson Wu "may . . . contain favorable, material information." *Id.*
20 Moreover, Hawkins attempted to develop this claim in state habeas proceedings below when
21 he sought an evidentiary hearing on this issue, but the request was denied by the state
22 appellate court. For this reason, the court GRANTS Hawkins' motion for discovery.

23 The parties shall have no more than **sixty days** from the date of this order to complete
24 the requested depositions. **Within seven days** of completion of the depositions, Hawkins
25 shall file and serve a statement regarding the completion of the discovery. As noted, Hawkins'
26 request for an evidentiary hearing is denied without prejudice until completion of the discovery.
27 If Hawkins wishes to renew his request for an evidentiary hearing as to claim five, he shall file
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1 a renewed motion for an evidentiary hearing with his statement regarding completion of the
2 discovery. The parties will be required to re-brief issue five following completion of the
3 discovery and evidentiary hearing, if necessary.

4 **IT IS SO ORDERED.**

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6 Dated: August 30, 2005



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PHYLLIS J. HAMILTON
United States District Judge